

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

**JI JEUN and
MIOK CHUNG,**

Defendants Below,
Appellants,

v.

**KAREN E. SOMMERS and
RALPH D. SOMMERS,**

Plaintiffs Below,
Appellees.

C.A. No. JP16-19-000857

TRIAL DE NOVO

Submitted: March 7, 2019

Decided: March 7, 2019

Written Order Issued: March 8, 2019

Karen E. Sommers, Plaintiff/Appellee, appeared *pro se*.

Ralph D. Sommers, Plaintiff/Appellee, appeared *pro se*.

Ji Jeun, Defendant/Appellant, appeared *pro se*.

Miok Chung, Defendant/Appellant, did not appear.

ORDER

Murray, J
Montano, J
Edmanson, J

On March 7, 2019 this Court, consisting of the Honorable James A. Murray, the Honorable Alexander J. Montano and the Honorable Wallace G. Edmanson, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Karen and Ralph Sommers (hereinafter referred to as Plaintiff or Plaintiffs), against Ji Jeun and Miok Chung (hereinafter referred to as Defendant or Defendants). For the following reasons the Court **DISMISSES PLAINTIFFS PETITION WITHOUT PREJUDICE.**

FACTUAL and PROCEDURAL BACKGROUND

Plaintiffs filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, accrued rent and court costs. This action is based on the Defendants' alleged failure to pay rent. Trial was held on February 18, 2019 and judgment was entered in favor of the Plaintiffs.³ Defendants filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and convened on March 7, 2019.

¹ 25 *Del. C.* § 5717(a). *Nonjury trials.* With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

³ *Sommers and Sommers v. Jeun et al*, Del. J.P., C.A. No. JP16-19-000857, Tracy, J. (Feb. 18, 2019).

PRE-TRIAL

Defendant presented two motions before the Court. First, Defendant motioned for a continuance. Defendant asserted he required additional time to gather documents and information to proceed with trial.

Plaintiffs opposed Defendant's motion.

After hearing arguments for and against, the Court ***DENIED*** Defendant's motion for continuance as not timely.⁴

Secondly, Defendant motioned to file a counterclaim.

Plaintiffs opposed Defendant's motion.

The filing of claims or counterclaims post-trial (initial single judge trial) and pre-*de novo* trial (appeal) are governed pursuant to 25 *Del. C.* § 5707(b) which states:

An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that **within 5 days of the filing of the appeal** [emphasis added], the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

In this case, the *de novo* appeal was filed on February 25, 2019. Pursuant to § 5707(b), any new "claims or counter-claims" had to be filed with the Court no later than March 5, 2019.

⁴ Defendants submitted a motion for continuance on March 4, 2019 asserting a medical condition which prevented them from attending trial. The Court denied said motion as Defendants failed to obtain Plaintiffs position and failure to provide medical documentation advising they were unable to appear for trial.

Based on the foregoing, Defendant's motion to allow the filing of a counterclaim is hereby ***DENIED*** as the motion is not timely.

Review of Plaintiffs' petition indicates they filed their petition prematurely. Plaintiffs' demand notice provides Defendants with "five days after service on you of this notice" to cure a demand for unpaid rent. Plaintiffs filed their petition on March 1, 2019. Their demand notice is dated January 24, 2019 with proofs of mailings attached which are dated January 25, 2019. Time computation in Landlord/Tenant matters are governed pursuant to 25 *Del. C.* § 5112 which states in pertinent part:

In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the **period runs until the end of the next day** [emphasis added] which is not a Saturday, Sunday or a legal holiday....

Plaintiffs mailing are dated January 25, 2019 which was a Friday, therefore day one of Defendants time to cure would begin on Monday, January 28, 2019 and the last day to cure would be Friday, March 1, 2019. As stated above the cure period runs until the end of the day. In the case Plaintiffs filed their petition before the final day to cure had fully lapsed. This error makes the filing of Plaintiffs' petition

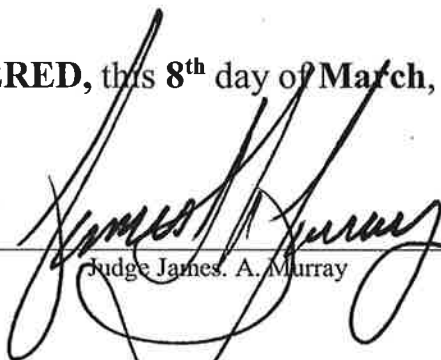
premature as Defendants were not provided with a full five days to cure Plaintiffs demand.

CONCLUSION


Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court unanimously hereby ***DISMISSES WITHOUT PREJUDICE*** Plaintiffs' petition.

The Court announced its decision and rationale in open court and reduced it to writing this date.

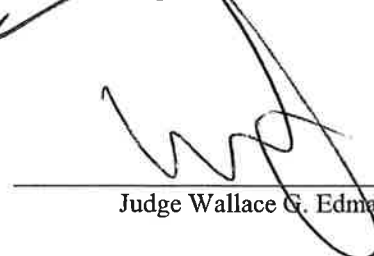
IT IS SO ORDERED, this 8th day of March, 2019.



Judge James A. Murray (SEAL)



Judge Alexander J. Montano (SEAL)



Judge Wallace G. Edmanson (SEAL)

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